

Your Excellencies/ Ladies and Gentlemen/ Dear Colleagues,

It is an absolute honour for me to address this gathering where I will be discussing certain subject matters that deserve the attention and further action of this audience.

This statement is delivered on behalf of People's Watch<sup>1</sup>, a not-for-profit and independent organization set up to promote a society free of human discrimination and injustice. People's Watch is also a member of the Working Group on Human Rights in India and the UN (WGHR) and has participated in UPR processes at the national level since 2008.

At the outset, let me state that I will be addressing the following issues: *Impunity and Human Rights Violations by Security Forces and Police and the performance of the National Human Rights Commission India (NHRCI) during this reporting period on crucial issues pertaining to human rights.*

Despite supporting thirteen recommendations out of twenty-one received during the previous UPR cycle, specifically on ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, India has failed to act upon its pledges. There were allegations of custodial violence and extrajudicial killings by police and security forces throughout the reporting period. As per the NHRCI data shared by the Ministry of Home Affairs (MHA), there were 9009 cases<sup>2</sup> of judicial deaths across the country from 2017 to Feb 2022. Police custody death cases with NHRCI stood at 649<sup>3</sup> from 2017 to Feb 2022.<sup>4</sup> In the last five years, disciplinary action was taken in just 21 cases of custodial deaths.<sup>5</sup> The government has also so far failed to properly implement police reforms directed by the Supreme Court in 2006 to ensure accountability.

Section 197 of the Criminal Procedure Code<sup>6</sup> and the Armed Forces (Special Powers) Act (AFSPA)<sup>7</sup> guarantee broad powers and immunity to public servants and security forces. AFSPA is currently active in a total of four North eastern states<sup>8</sup> and Jammu & Kashmir.

At this juncture, it is essential to address these issues with utmost priority and thus **we recommend the Government of India to:**

- Ratify the Convention against Torture and its Optional Protocol.

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<sup>1</sup> <http://peopleswatch.org/about-us>

<sup>2</sup> 2,152 cases of judicial deaths in 2021 – Feb 22, 1840 in 2020-21, 1584 in 2019-20, 1797 in 2018-19 and 1636 in 2017-18.

<sup>3</sup> 155 cases of police custody deaths in 2021- Feb 22, 100 in 2020-21, 112 in 2019-20, 136 in 2018-19 and 146 in 2017-18.

<sup>4</sup> <https://nhrc.nic.in/sites/default/files/2022-3-23.pdf>

<sup>5</sup> Ibid

<sup>6</sup> <https://indiankanoon.org/doc/12704/>

<sup>7</sup> <https://idsa.in/system/files/Monograph7.pdf>

<sup>8</sup> Nagaland, Assam, Arunachal Pradesh, Manipur

- Revise the Armed Forces (Special Powers) Act bringing it into compliance with international law, especially its obligations under the International Covenant on Civil and Political Rights (ICCPR).
- Remove immunity granted under the Criminal Procedure Code in cases of violations of fundamental rights.
- Implement police reform as recommended by the Supreme Court including establishing a complaint mechanism against police abuse.
- Ratify the Rome Statute of the International Criminal Court (ICC) and fully align the national legislation with the statute.

**Second and last, let me turn to addressing the performance of the National Human Rights Commission India (NHRCI) in the last five years on various pressing human rights affairs.**

Despite the concerns raised by the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) which led to the deferral of the re-accreditation of the NHRCI in 2016, the institution was able to retain its ‘A’ status in 2017. The ‘A’ status was retained despite no changes whatsoever and based on the commitment to changes and to our surprise the SCA made an exception in this case on the 25<sup>th</sup> anniversary of the NHRC. However, NHRCI seldom acted upon its mandate during this reporting period and the incidents highlighted below will elucidate the statement.

During the UPR III cycle, India witnessed several serious issues raising concerns over shrinking civic space. These include protests against the Citizenship Amendment Act<sup>9</sup>; the farmers’ protests against the three amended farm laws which were later withdrawn by the State<sup>10</sup>; clampdown in Kashmir post the abrogation of Article 370 of the Constitution of India<sup>11</sup>. These protests were met with violent reprisals, prosecution and persecution of protesters. NHRCI’s silence and failure to intervene in the crucial human rights crisis facing India have led to legitimate doubts that the Commission is now a diminished institution.

NHRCI has not undertaken a review of legislations that impact human rights, notably the Foreign Contribution (Regulation) Act<sup>12</sup> which has been used to control the functioning of civil society organisations, Unlawful Activities (Prevention) Act<sup>13</sup> which is used to arrest and detain human rights defenders for prolonged periods and Citizenship Amendment Act which discriminates based on religion.

<sup>9</sup> <https://indianexpress.com/article/explained/explained-how-to-be-a-citizen-of-india-earlier-now-6165960/>

<sup>10</sup> <https://timesofindia.indiatimes.com/india/how-farmers-protests-against-the-3-farm-laws-unfolded/articleshow/80648849.cms>

<sup>11</sup> <https://jammuandkashmir.org.in/abrogation-article-370/#:~:text=Abrogation%20Article%20370%20On%205%20August%202019%2C%20the,cut%20and%20political%20leaders%20placed%20under%20house%20arrest.>

<sup>12</sup> <https://fcraonline.nic.in/home/index.aspx>

<sup>13</sup> [https://www.mha.gov.in/sites/default/files/A1967-37\\_0.pdf](https://www.mha.gov.in/sites/default/files/A1967-37_0.pdf)

NHRCI is required to study international human rights treaties and make recommendations for their effective implementation. The NHRCI has not taken sufficient steps to ensure the implementation of the UN Convention Against Torture among several other important international instruments during the UPR-III cycle.

Thus, to ensure the effective functioning of the NHRCI, **we recommend the Government of India to:**

- Amend the Protection of Human Rights Act 1993 in accordance with Paris Principles and in accordance with all the recommendations of GANHRI's SCA made in 2011, 2016 and 2017.
- Assure that the appointments in NHRCI reflect the diversity of the Indian society and make certain the representation of all minorities.
- Refrain from appointing retired bureaucrats, security officials and members of organisations associated with political parties in power as Members or even deemed Members of the NHRCI.
- End the practice of only deputing police officers to NHRCI's Investigation Division, and refrain them alone from conducting investigations in circumstances where the alleged perpetrators are the police.
- Ensure the NHRCI leads a consultative process of developing a National Action Plan on Human Rights Defenders, National Protection Law and Policy on Human Rights Defenders and guidelines on ensuring free assembly, association and expression.

On that note, I am concluding.

Thank you for your attention.